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CITATIONS

CASES:

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Radio Officers' Union v. *National Labor Relations Board*, 347 U.S. 17	6
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STATUTE:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*):

Section 8(a)(1)	2, 5
Section 8(a)(3)	2, 5, 6
Section 8(b)(1)(A)	2, 5
Section 8(b)(2)	2, 5, 6

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 775

LOCAL 600, HIGHWAY AND CITY FREIGHT DRIVERS, DOCKMEN & HELPERS, AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

No. 794

SPECTOR FREIGHT SYSTEM, INC., *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

On Petitions for Writs of Certiorari to the United States Court of Appeals for the Eighth Circuit

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BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Company Pet. 11-22, Union Pet. 23-34) is reported at 273 F. 2d 272. The Board's Decision and Order (R. 60-68)[1] are reported at 123 NLRB No. 3.

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[1] "R" refers to the Board appendix filed with the court below.

JURISDICTION

The opinion and judgment of the Court of Appeals was issued on January 5, 1960 (Company Pet. 11-22, Union Pet. 23-34), and a decree was entered on January 27, 1960 (Company Pet. 23-24, Union Pet. 35-36). The petition for a writ of certiorari in No. 775 was filed on March 9, 1960, and that in No. 794 was filed on March 16, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. The petition in No. 775 presents these questions:

(a) Whether the record supports the Board's finding that the Union, in violation of Section 8(b)(2) and (1)(A) of the National Labor Relations Act, caused an employee to be discharged for failure to pay dues for October, a month when the employee was not employed by the employer and thus not subject to the union-security agreement between the Union and the employer.

(b) Whether the record supports the Board's finding that the Union, in violation of Section 8(b)(1)(A) of the Act, threatened the employee with loss of employment if he did not pay dues at a penalty rate for November and December, months when he was employed.

2. The petition in No. 794 presents this additional question:

Whether the record supports the Board's finding that the employer, in violation of Section 8(a)(3) and (1) of the Act, discharged the employee with knowledge of the fact that the dues delinquency asserted by the Union involved a period before the employee was employed by the employer.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth in the petitions (Company Pet. 10, Union Pet. 21-22).

STATEMENT

A. The Board's Findings

On November 6, 1957, Conrad was hired by petitioner Company as an over-the-road driver and executed a checkoff card authorizing the Company, pursuant to its contract with the Union, to deduct $5 from his pay each month and remit that sum as dues to the Union (R. 49; 13, 19). The contract also contained a union security clause which required that all employees must become and remain "members in good standing" of the Union as a condition of employment. Prior to his November employment, Conrad was a Union member for several years and had paid his Union dues through September 1957. He did not pay dues in October, a month during which he was unemployed.

The Company, in practice, deducted dues from its employees' wages only on a quarterly basis in advance, instead of monthly as called for by the checkoff card (R. 50; 28). Since Conrad was hired after the beginning of the last quarter in 1957, the Company did not deduct dues for November and December (R. 49-50; 32-33). Conrad did not pay his November and December dues directly to the Union nor did he pay dues for October (R. 49; 23).

The Union, pursuant to its constitution and bylaws, suspended Conrad from membership on December 31 because he had not paid dues for the past three months

(R. 50; 29-30).[2] On January 2, 1958, the Company remitted quarterly dues to the Union, including $15 covering Conrad's dues for January, February and March (R. 50; 13). The Union noted on the return receipt to the Company that Conrad had been suspended.

On January 8, following a telephone call from Union President Grogan, the Company's driver supervisor, Lloyd, informed Conrad that he could not work without Union clearance and that he was to report to the Union office (R. 50; 20, 34, 37). At the Union office Secretary-Treasurer Neary advised Conrad that he had been suspended from the Union for dues delinquency and that, under the Union's bylaws, he could be restored to good standing only upon the payment of a $60 reinstatement fee and dues payments for October, November and December at the increased rate of $6 a month for late payment of dues (R. 51; 22-23, 30, 31).[3] Conrad protested that he was not liable for October dues since he was not employed during that month and therefore that he was not obligated to pay a reinstatement fee (R. 51; 22-23). Neary replied that the Union would not accept less than the $60 reinstatement fee and dues for November and December at the $6 rate for delinquent dues (R. 51; 31). Neary then notified

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[2] The International Constitution provides, (R. 45) that: "Any member who shall be three months in arrears in the payment of dues • • •, at the end of the third month, shall automatically stand suspended and shall not be entitled to any rights or privileges as a member of the local union • • •."

[3] The Union bylaws provide (R. 44) that: "The dues • • • shall be not less than five ($5.00) Dollars per month and shall be paid on or before the first day of the current month. Dues paid after the first of the month shall be six ($6.00) Dollars. Any member delinquent three (3) months or more must pay a sixty ($60.00) Dollar reinstatement fee • • •."

Lloyd by telephone that he was certain that the "discrepancy" would be straightened out and that Conrad could continue at work (R. 51; 30). Conrad returned to work but made no payment to the Union on or after January 8.

By letter dated January 30, 1958, the Union requested the Company to discharge Conrad because he had failed to remain a member in good standing of the Union, as required by their collective bargaining agreement (R. 51; 43-44). Union President Grogan advised Lemon, the Company's labor relations director, upon the latter's inquiry, that the Union's request was based upon Conrad's failure to pay dues for October, November and December 1957 (R. 51; 14). On February 3, 1958, Driver Supervisor Lloyd notified Conrad that he was discharged (R. 51; 24-25, 37).

B. The Board's Conclusions and Order

On the basis of the foregoing facts, the Board found that the Union violated Section 8(b)(2) and (1)(A) of the Act by causing the Company to discharge Conrad for his non-payment of dues for October, a month during which he was not employed by the Company; and that the Company violated Section 8(a)(3) and (1) of the Act by discharging Conrad at the Union's request with knowledge of the Union's unlawful motivation. The Board further found that the Union violated Section 8(b)(1)(A) of the Act by threatening Conrad with loss of employment unless he paid dues for November and December at the rate of $6 per month, because the regular rate of dues was only $5 and the additional dollar constituted a penalty for late payment (R. 60-63, 51-52).

The Board's order (R. 62-68) directs both the Union

and the Company to cease and desist from the unfair labor practices found, and, jointly and severally, to make Conrad whole for any loss of earnings suffered by reason of their discrimination against him. The order also directs the Union to notify the Company and Conrad that it withdraws all objections to the employment of Conrad, and directs the Company to offer him immediate and full reinstatement.

C. The Decision of the Court of Appeals

The Court of Appeals affirmed the Board's findings and conclusions as adequately supported by the record, and enforced the Board's order.

ARGUMENT

1. As stated in *Radio Officers' Union* v. *National Labor Relations Board*, 347 U.S. 17, 40, "§§ 8(a)(3) and 8(b)(2) [of the Act] were designed to allow employees to freely exercise their right to join unions, be good, bad, or indifferent members, or abstain from joining any union without imperiling their livelihood." The first proviso to Section 8(a)(3), however, permits the employer and the union, in certain circumstances, to enter into an agreement requiring employees, as a condition of employment, to become and remain members of the union. An employee can be discharged under such agreement only for "failure * * * to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership." A discharge to enforce any other obligation of union membership exceeds the protection of the proviso, and thus falls under the ban of Section 8(a)(3) and (b)(2).

In the Board's view, sustained by the court below,

such was the situation here. That is, Conrad was discharged for non-payment of dues in October, a month when he was not employed by the Company and thus not obligated under its union security agreement with the Union to pay dues to the Union. Moreover, he was threatened with discharge unless he paid a late fee of one dollar in addition to the normal dues for November and December. The principal question raised by the petitions is whether, as the court below held, the Board's findings in these respects are supported by substantial evidence.[4] Clearly, no issues warranting review by this Court are presented. See *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491.

2. In any event, there is ample evidentiary basis for the Board's findings. As shown pp. 3-5, *supra*, Conrad, although a Union member, did not pay dues in October when he was unemployed. He was hired by the Company on November 6, 1957 and executed a checkoff card authorizing the Company to deduct $5

[4] The petition in No. 775 also raises the question (Pet. 3) whether the application of a union security provision, to collect dues for a period prior to the time the employee became subject to it, exceeds the protection of the first proviso to Section 8(a)(3). This question is plainly insubstantial in the light of the terms of the proviso and settled authority. See *National Labor Relations Board* v. *Murphy's Motor Freight, Inc.*, 231 F. 2d 654 (C.A. 3); *Colonie Fibre Co.* v. *National Labor Relations Board*, 163 F. 2d 65, 67-68, 70 (C.A. 2); *National Labor Relations Board* v. *International Union*, 194 F. 2d 698, 701-702 (C.A. 7); *National Labor Relations Board* v. *Eclipse Lumber Co.*, 199 F. 2d 684, 685 (C.A. 9). Indeed, as the court below pointed out (Union Pet. 30), the briefs of both the Company and the Union in that Court implicitly conceded that, if substantial evidence supported the Board's finding, "the failure of Conrad to pay dues for October, a pre-hire month, would not constitute a legal basis for terminating his employment."

from his pay each month and remit that sum as dues to the Union. The Company did not deduct dues for November and December because it was its practice to make such deductions on a quarterly basis in advance, and Conrad was hired after the beginning of the last quarter in 1957. However, on January 2, 1958, it remitted quarterly dues to the Union, including $15 covering Conrad's dues for January, February and March. On January 30, the Union requested Conrad's discharge because he had failed to remain a member in good standing, and, when the Company's labor relations director inquired as to the reason, the Union president informed him that Conrad had failed to pay dues for October, November and December. On these facts, it is clear, as the Board found, that the reason for Conrad's discharge included his failure to pay dues in October, a month when he was not covered by the union security agreement, and that the Company was specifically apprised of this fact.[5]

Nor is the Union in any better position if it be assumed, as it contends (Pet. 13-17), that Conrad was discharged for failure to pay a reinstatement fee of $60, which the Union bylaws imposed for a dues delinquency of three months or more (see n. 2, *supra*). Even if a reinstatement fee can be analogized to a new

[5] The Company contends (Pet. 7-9) that it was unaware of the provision of the Union's Constitution (n. 2, *supra*) which deprived an employee of membership privileges only on failure to pay dues for three months, and thus could have assumed that Conrad's failure to pay December dues was alone sufficient for his discharge. This position is hardly tenable in the light of the fact that the Union linked the three months together; the Company itself customarily remitted dues to the Union on a three-month rather than a monthly basis; and any delinquency on Conrad's part for December was attributable not to Conrad, who had authorized a monthly checkoff, but to this Company practice.

initiation fee and thus be exacted under certain circumstances (see the cases cited at Union Pet. 15-16), it cannot be imposed where, as here, the delinquency justifying the fee depends upon counting a month not subject to the union security agreement. Otherwise, as the court below concluded (Union Pet. 31), this "would permit a union to do indirectly what it recognizes it is prohibited from doing directly."

3. Similarly, the facts here warranted the Board's conclusion, sustained by the court below, that the $6 fee which the Union demanded that Conrad pay for November and December was not "periodic dues" but rather included a penalty for late payment, which is not protected under the proviso to Section 8(a)(3). Thus, the Union bylaws provided (n. 3, *supra*) that: "The dues for this Local Union shall be not less than five ($5.00) Dollars per month and shall be paid on or before the first day of the current month. Dues paid after the first of the month shall be six ($6.00) Dollars." The International Constitution added (R. 45) that: "All members paying dues to local unions must pay them on or before the first business day of the current month, in advance. Any member failing to pay his dues at such time shall not be in good standing." Reading these two provisions together, it is apparent that the regular rate of dues was $5 per month, payable on or before the first day of the current month, and that the extra $1 was charged, not on any consistent basis or as a means of meeting operating costs, but only to penalize late payments. *National Labor Relations Board* v. *Bakery & Confectionery Workers, Local 12*, 245 F. 2d 211 (C.A. 3), relied on by the Union (Pet. 17-20), is distinguishable. There, as

the court below pointed out (Union Pet. 33), the by-laws, unlike those here, could be viewed as "allowing a discount from the stated monthly dues figure, if payment was made before the last day of the month in which dues were payable." Moreover, the record contained "affirmative evidence that [this] discount procedure was intended not as a punishment, but rather as a real inducement and reward for the prompt payment of monthly dues" (245 F. 2d at 214).

CONCLUSION

The petitions for writs of certiorari should be denied.

Respectfully submitted,

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